IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 86 OF 2001

Communidade of Ella,
Attorney Holder
Shri Jose Avelino
Fortunate Menezes.
R/o Ella Ilhas-Goa. ... Appellant

versus

Special Land Acquisition
Officer, North Goa District
(K.R.C.) Panaji-Goa. ... Respondent

Mr. S. S. Kantak, Advocate for the Appellant.

Mr. E. Afonso, Advocate for the Respondent.

CORAM : S. A. BOBDE &
N. A. BRITTO, JJ.

DATE : 7TH JULY, 2004.

**ORAL JUDGMENT**(PER S.A.BOBDE,J.)

An Appeal of the Communidade of Ella is filed against the Award dated 6th June, 2000, by the Reference Court dismissing the Appellant's land situated at Ella and acquired to the extent of 26,550 sq. metres. The rate of compensation awarded for different portions was Rs.10.80, Rs.12/-, Rs.18 and Rs.30/-. However, the Appellant applied that the matter be referred to the Court under Section 18 of the Land Acquisition Act. The

Appellant claimed compensation at the rate of Rs.250/- per sq. metre.

2. It is not necessary in this case to elaborate since we propose to decide this Appeal on a short point. In paragraph 7 of the Order rejecting reference, the Court has observed that the witness on the behalf of the Communidade admitted "that the acquired land was tenanted".

3. Mr. S. S. Kantak, learned Counsel for the Appellant pointed out from the deposition of A.W.1, Jose Avelino F. Menezes, that the witness clearly stated in cross-examination as follows:-

> "It is not true that the land acquired was tenanted".

4. The Reference Court has clearly acted on some misconception and has thereby committed an error. There is no doubt that the view of the Reference Court was based on the supposed admission that the acquired land was tenanted. Since, there is no basis for the said assumption, we are inclined and we do hereby set aside the Order in Appeal and remand the matter to the Reference Court for fresh decision in accordance with law.

5. Both the parties shall be entitled to apply to the Reference Court for permission to lead further evidence.

S. A. BOBDE, J.

N. A. BRITTO,J.

RD.